

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 570 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE AKIL KURESHI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAHESHKUMAR K MEHTA SINCE DECE-ASED THROUGH HIS HEIRS & LRS.
Versus

BHARATKUMAR M PARMAR

Appearance:

1. First Appeal No. 570 of 1996
MS SONALI R DESAI for Petitioner No. 1-1/1
-

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

Heard Ms.Sonali Desai for the appellant. Urgent note is filed by her praying that the appeal filed by the appellant be permitted to be withdrawn. Accordingly, office has placed this appeal along with submission and Note filed by the appellant-original claimant Maheshkumar Kanaiyalal Mehta challenging the judgment and award by the Motor Accident Claims Tribunal, Bharuch, dated 19th September 1995, as according to the appellant the amount awarded by the Tribunal is not proper. During the pendency of appeal, the appellant Maheshkumar had expired and accordingly, application for bringing heirs on record was filed by Kantaben, mother of the deceased, in this proceedings, being Civil Application No.9884 of 2000. In the said application, she had annexed the death certificate of Maheshkumar, issued by the Municipal Authority which shows that Maheshkumar had died on 8th December, 1999.

2. The said Civil Application was allowed by the High Court on 16th March 2001 and Kantaben was ordered to be brought on record in place of appellant Maheshkumar. As per the order, the name of Kantaben was ordered to be shown on the cause title of the first appeal within three days.

3. Unfortunately, Kantaben, mother of the appellant Maheshkumar had also passed away on 24th September 2004. It is the contention of Ms.Desai, learned advocate for the appellant that there are no heirs of Kantaben who can be brought on the record of the present appeal and accordingly, therefore, she has not filed any application for bringing the heirs of deceased Kantaben on record. She has produced the death certificate of Kantaben issued by the Bharuch Municipality on 7th October, 2002 which shows that she has passed away on 24th September 2002. The same is ordered to be taken on record. As the sole appellant has died, the fate of the appeal is that the appeal itself is abated as no heirs are there who can be joined to prosecute the appeal further after the death of Kantaben. However, as the original appeal is through the advocate and when the original appellant had died, Kantaben, mother of the original appellant was brought on record and the said application was granted and now Note is filed for seeking permission to withdraw the appeal. In our view, there is no question of withdrawing the appeal as the appeal itself is abated.

4. The appeal is disposed of as abated.

(D.K.Trivedi, J.)

(Akil Kureshi, J.)
(vjn)